
HOUSE BILL No. 1773

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.3.

Synopsis: Sustainable energy. Establishes the sustainable energy corporation to: (1) ensure that all Indiana electric and gas ratepayers are given the opportunity to participate in and benefit from a comprehensive set of sustainable energy programs and initiatives designed to overcome barriers to implementation; and (2) promote and implement sustainable energy technologies and measures in Indiana. Establishes the sustainable energy fund to make loans and award grants to implement sustainable energy programs. Requires an electric distribution company and a gas distribution company to impose a monthly surcharge on those retail customers that meet or exceed specified consumption levels for deposit in the fund beginning September 1, 2003. Allows an electric distribution company and a gas distribution company to file a rate case with the utility regulatory commission to recover lost revenue due to sustainable energy programs initiated by the corporation.

Effective: Upon passage.

Pelath

January 21, 2003, read first time and referred to Committee on Commerce and Economic Development.

C
o
p
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1773

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1.3 IS ADDED TO THE INDIANA CODE AS A
2 **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **ARTICLE 1.3. SUSTAINABLE ENERGY**

5 **Chapter 1. Definitions**

6 **Sec. 1. The definitions in this chapter apply throughout this**
7 **article.**

8 **Sec. 2. "Biomass" means:**

9 **(1) closed loop biomass;**

10 **(2) nonhazardous cellulosic waste material that:**

11 **(A) does not contain painted, treated, or pressurized wood**
12 **or wood contaminated with plastics or metals;**

13 **(B) is segregated from other waste materials; and**

14 **(C) is derived from forest related resources, including:**

15 **(i) mill residues;**

16 **(ii) precommercial thinnings;**

17 **(iii) slash; and**



C
o
p
y

(iv) brush, except old growth timber, black liquor, and materials from national forests unless the materials are in the form of paper mill waste;

(3) waste pallets, crates, dunnage, and landscape or right-of-way trimmings, except municipal solid waste, post consumer wastepaper, construction debris, and demolition debris;

(4) agricultural byproducts, including byproducts from:

(A) orchards;

(B) vineyards;

(C) grain;

(D) legumes;

(E) sugar; and

(F) other crops; and

(5) gases from municipal wastewater.

Sec. 3. "Central station facility" means:

(1) a baseload;

(2) an intermediate; or

(3) a peaking;

electric power generating facility that is used to generate electricity primarily for the wholesale or retail electric markets.

Sec. 4. "Closed loop biomass" means organic material from a plant that is planted exclusively for purposes of being used at a facility to produce electricity.

Sec. 5. "Commission" refers to the Indiana utility regulatory commission established by IC 8-1-1-2.

Sec. 6. "Corporation" refers to the sustainable energy corporation established by IC 8-1.3-2-1.

Sec. 7. (a) "Distributed energy resource" means:

(1) an end use energy efficiency improvement; or

(2) electricity produced from:

(A) renewable energy resources;

(B) microturbines;

(C) internal combustion engines;

(D) Stirling engines;

(E) combined heat and power systems; or

(F) district energy systems;

that primarily serves a customer's load.

(b) The term does not include the following:

(1) A central station facility.

(2) Electric power generators that use:

(A) diesel fuel;

C
O
P
Y



- (B) fuel oil;
- (C) gasoline;
- (D) nuclear fuel; or
- (E) coal.

Sec. 8. "Electric distribution company" means a corporation, a company, a partnership, a limited liability company, an individual, or an association of individuals or their lessees, trustees, or receivers appointed by a court that distributes electric power to retail customers.

Sec. 9. (a) "End use energy efficiency improvement" means the use or installation of a device, method, or project that reduces electrical or natural gas energy usage.

(b) The term includes the following:

- (1) Home weatherization.
- (2) Appliance efficiency modifications or replacements.
- (3) Commercial motor efficiency modifications or replacements.
- (4) Residential or commercial lighting efficiency or modifications.
- (5) Systems to turn off or vary the delivery of energy, including a thermostat or lighting control.
- (6) Building design with the purpose of achieving end use energy reductions.

Sec. 10. "Fund" means the sustainable energy fund established by IC 8-1.3-4-1.

Sec. 11. "Gas distribution company" means a corporation, a company, a partnership, a limited liability company, an individual, or an association of individuals or their lessees, trustees, or receivers appointed by a court that distributes natural gas to retail customers.

Sec. 12. "Renewable energy" means energy derived from any of the following sources:

- (1) Solar photovoltaic and solar thermal energy.
- (2) Wind.
- (3) Fuel cells.
- (4) Geothermal energy conversion, except end use grid dependent technologies, including geothermal heat pumps.
- (5) Biomass.

Sec. 13. "Sustainable energy" means:

- (1) an end use efficiency improvement;
- (2) renewable energy; or
- (3) a distributed energy resource.

C
o
p
y



Chapter 2. Sustainable Energy Corporation

Sec. 1. (a) The governor shall request, on behalf of the state, the establishment of a private nonprofit corporation called the sustainable energy corporation.

(b) The corporation shall do the following:

(1) Ensure that all Indiana electric and gas ratepayers are given the opportunity to participate in and benefit from a comprehensive set of sustainable energy programs and initiatives designed to overcome barriers to implementation.

(2) Promote and implement sustainable energy technologies and measures in Indiana.

(3) Carry out the purposes of this article.

(c) Before the corporation may begin operation, the governor must conduct a public hearing to give all interested parties an opportunity to review and comment upon the articles of incorporation, bylaws, and methods of operation of the corporation. Notice of the hearing must be given at least fourteen (14) days before the hearing in accordance with IC 5-14-1.5-5(b).

Sec. 2. (a) The board of directors of the corporation is composed of sixteen (16) voting members as follows:

(1) The lieutenant governor or the lieutenant governor's designee.

(2) The chairperson of the commission or the chairperson's designee.

(3) The utility consumer counselor or the utility consumer counselor's designee.

(4) Thirteen (13) members appointed by the governor as follows:

(A) Two (2) representatives of public or private universities in Indiana.

(B) Two (2) representatives of statewide investor owned utility organizations.

(C) One (1) representative of statewide municipal utility organizations.

(D) One (1) representative of statewide rural electric cooperative organizations.

(E) One (1) representative of statewide industrial organizations.

(F) One (1) representative of statewide commercial organizations.

(G) One (1) representative of statewide business organizations that represent energy service companies.



C
O
P
Y

(H) One (1) representative of statewide consumer organizations that represent residential ratepayers.

(I) One (1) representative of statewide consumer organizations that represent low income residential ratepayers.

(J) One (1) representative of statewide environmental organizations.

(K) One (1) representative of statewide organized labor organizations.

(b) The appointments made by the governor under subsection (a)(4) must be made in accordance with recommendations provided by the organizations described in subsection (a)(4).

(c) Members of the board of directors shall:

(1) be appointed not more than sixty (60) days after the establishment of the corporation; and

(2) serve:

(A) subject to subsection (d), a term of three (3) years beginning on the date of their appointments; and

(B) until their successors are appointed and qualified.

(d) The governor shall prescribe the initial terms of the appointed members so that they are staggered.

(e) A vacancy on the board of directors shall be filled by the governor not more than thirty (30) days after the vacancy occurs. A person appointed to fill a vacancy shall serve the remainder of the term of the member of the board the person is replacing.

(f) The lieutenant governor, chairperson of the commission, and utility consumer counselor or their designees serve on the board of directors without compensation.

(g) An appointed member of the board of directors is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). An appointed member of the board is, however, entitled to reimbursement for traveling expenses as provided under IC 4-13-1-4 and other expenses actually incurred in connection with the duties of the member as provided in the state policies and procedures established by the Indiana department of administration and approved by the budget agency.

Sec. 3. The board of directors shall do the following:

(1) Elect the following officers of the corporation:

(A) A chairperson.

(B) A vice chairperson.

(C) A treasurer.

(D) A secretary.



C
O
P
Y

- (E) Any other officers the board considers appropriate.
- (2) Hire an executive director of the corporation who shall do the following:
- (A) Be the principal executive of the corporation.
- (B) Manage, supervise, and control the daily affairs of the corporation.
- (C) Implement the policies of the directors.
- (D) Perform other duties prescribed by the board of directors.

Sec. 4. (a) The board of directors shall meet at least quarterly.

(b) The meetings of the board shall be open to the public under IC 5-14-1.5.

(c) Notice of a board meeting must be given at least fourteen (14) days before the meeting in accordance with IC 5-14-1.5(b).

(d) A person who attends a public meeting of the board shall be given an adequate opportunity to comment through the oral or written presentation of facts or argument.

(e) Written comments submitted to the board shall be maintained and made available for public inspection.

(f) Two-thirds (2/3) of the members of the board constitute a quorum for doing business.

(g) Except as otherwise provided by law, a majority vote of the members present at any regular or special meeting of the corporation is required for passage of any matter put to a vote before the board.

Sec. 5. Debts incurred by the corporation under authority of this article do not represent or constitute a debt of the state within the meaning of the provisions of the Constitution of the State of Indiana or Indiana statutes.

Sec. 6. (a) The corporation shall be audited each year by the state board of accounts.

(b) The corporation shall pay the full costs of the audit required under subsection (a).

Sec. 7. The corporation shall coordinate programs established under this article with:

- (1) low income weatherization programs;
- (2) state or federal energy efficiency and renewable energy programs; and
- (3) other state agencies as appropriate.

Sec. 8. The corporation may enter into contracts with public and private entities to implement this article.

Sec. 9. (a) The board of directors shall establish priorities for

C
o
p
y



and implement the following:

(1) Initiatives to educate businesses, policy makers, and the public as to the benefits of end use energy efficiency improvements.

(2) Programs to assist commercial and industrial energy consumers in making end use energy efficient purchases when replacing or remodeling existing equipment and facilities.

(3) Programs to assist and train energy auditors.

(4) Programs to assist commercial and industrial energy consumers in taking advantage of opportunities to gain energy savings through incremental investments during construction of new facilities.

(5) Programs to allow eligible commercial and industrial customers, subject to criteria developed by the corporation, to implement end use efficiency measures on their own premises and receive partial refunds of their contributions to the fund.

(6) Programs that use a combination of cash incentives, energy ratings, technical assistance, education, direct installation or efficiency measures, energy efficient mortgages, and strategic partnerships to introduce high efficiency technologies and building practices into Indiana.

(7) Programs that target low income families that build on Indiana's weatherization program for single family homes and provide technical assistance, education, and direct installation of measures for multiple family units.

(8) Programs to transform the market for end use energy efficiency improvements both in terms of the mix of products and consumer choices through a combination of incentive programs, marketing, and coordination with vendors and market participants, including high efficiency residential lighting products and home appliances.

(9) Programs to provide incentives to or engage in research and activities that support new end use energy efficiency or renewable energy technologies and applications.

(10) Programs and initiatives developed by other organizations and parties that contribute to fulfilling the corporation's mission and requirements under this article.

(11) Programs to analyze and evaluate the need for changes to building codes in Indiana in terms of energy efficiencies and savings benefits.

(12) Initiatives to promote the use of renewable resources by

C
o
p
y



Indiana consumers and businesses.

(13) Initiatives to promote the development of renewable energy resources and businesses in Indiana.

(14) Initiatives to improve reliability of the electric transmission and distribution systems through the use of distributed energy resources.

(15) Initiatives determined by the board to be commensurate with the mission of the corporation.

(b) The corporation shall take into account the following criteria in selecting programs under this section:

(1) The needs of persons and businesses facing the most significant barriers to participation in the market for end use energy efficiency services and renewable energy installation.

(2) The cost effectiveness of each program as determined by the criteria set forth in IC 8-1.3-3-3.

Sec. 10. The corporation established by this chapter shall remain in operation until the general assembly provides by law for termination of the corporation.

Chapter 3. Required Reports and Criteria

Sec. 1. (a) The corporation shall submit a report before July 1 of each year to the governor, the legislative council, and the board of directors of the corporation.

(b) The report required under subsection (a) must include the following:

(1) A statement of the corporation's revenues by source and expenditures by purpose.

(2) Statistics relevant to the programs and operations of the corporation.

(3) A description of the corporation's goals, legal responsibilities, and accomplishments.

(4) Comments on the state of energy efficiency and renewable energy markets in Indiana.

(5) Suggestions for legislation and the rationale for any proposals.

(6) The progress in carrying out the plan required under section 2(b)(5) of this chapter.

(7) Any other matters that the corporation wishes to bring to the attention of the governor and the legislative council.

(8) Any comments or proposals that any member of the corporation's board gives to the chairperson to include in the report.

(c) The corporation shall conduct a meeting to receive

C
O
P
Y



1 comments from interested parties regarding the report required
2 under subsection (a) before the report is submitted to the governor,
3 legislative council, and the board of directors of the corporation.

4 **Sec. 2. (a)** The corporation shall submit an assessment of the
5 energy efficiency improvement and renewable energy potential
6 before October 1 of each even-numbered year to the governor, the
7 legislative council, and the board of directors of the corporation.

8 **(b)** The assessment required under subsection (a) must include
9 the following:

10 **(1)** An analysis of the barriers to and potential of sustainable
11 energy resources in Indiana and the region.

12 **(2)** An estimate of existing investments in sustainable energy
13 resources in Indiana.

14 **(3)** An estimate of probable future market driven investments
15 in sustainable energy resources in Indiana.

16 **(4)** A recommendation as to the optimal extent, size, mix, and
17 general location of sustainable energy resources to achieve
18 maximum efficiencies and benefits for the people of Indiana.

19 **(5)** A plan for achieving the efficiencies and benefits described
20 in subdivision (4).

21 **(c)** While preparing the assessment required under subsection
22 (a), the corporation shall conduct at least one (1) public hearing.

23 **Sec. 3.** The corporation shall develop criteria to assess
24 sustainable energy resource potential that includes a comparative
25 analysis of energy resources available to Indiana in terms of:

26 **(1)** short term and long term energy costs; and

27 **(2)** societal benefits, including the following:

28 **(A)** Impact on electric and natural gas system reliability.

29 **(B)** Impact on public health costs.

30 **(C)** Impact on environmental quality and cost savings to
31 the citizens of Indiana.

32 **(D)** Impact on competitive electric and natural gas
33 markets.

34 **(E)** Impact on economic growth, including employment
35 opportunities.

36 **(F)** Other issues the corporation considers relevant.

37 **Chapter 4. Sustainable Energy Fund**

38 **Sec. 1. (a)** The sustainable energy fund is established to:

39 **(1)** make loans and award grants to implement this article;
40 and

41 **(2)** pay the costs of administering this article.

42 The fund shall be administered by the board of directors of the

C
o
p
y



1 corporation.

2 (b) The fund consists of the following:

3 (1) Money collected under sections 2 and 3 of this chapter.

4 (2) Appropriations to the fund from other sources.

5 (3) Grants, gifts, and donations intended for deposit in the
6 fund.

7 (4) Interest that accrues from money in the fund.

8 (c) The expenses of administering the fund shall be paid from
9 money in the fund.

10 (d) The treasurer of state shall invest the money in the fund not
11 currently needed to meet the obligations of the fund in the same
12 manner as other public money may be invested. Interest that
13 accrues from these investments shall be deposited in the fund.

14 (e) Money in the fund at the end of a state fiscal year does not
15 revert to the state general fund.

16 Sec. 2. (a) Beginning September 1, 2003, the commission shall
17 require an electric distribution company to impose a monthly
18 surcharge, in an amount determined by the commission, on the
19 company's retail customers that meet or exceed the monthly
20 consumption level specified in subsection (b) for deposit in the
21 fund.

22 (b) An electric distribution company shall impose a monthly
23 surcharge under subsection (a) on a retail customer that consumes
24 at least two thousand (2,000) kilowatt hours of electricity during
25 the month. The monthly surcharge shall be imposed at a rate
26 determined by the commission under subsection (a), but not to
27 exceed three-hundredths of one cent (\$0.0003) per kilowatt hour
28 for each kilowatt hour consumed.

29 (c) The commission may impose the surcharge at different rates
30 for different classes of retail customers of electric distribution
31 companies based on the average monthly electricity consumption
32 of those customers from each class that meet or exceed the monthly
33 consumption level specified in subsection (b).

34 Sec. 3. (a) Beginning September 1, 2003, the commission shall
35 require a gas distribution company to impose a monthly surcharge,
36 in an amount determined by the commission, on the company's
37 retail customers that meet or exceed the monthly consumption level
38 specified in subsection (b) for deposit in the fund.

39 (b) A gas distribution company shall impose a monthly
40 surcharge under subsection (a) on a retail customer that consumes
41 at least twenty (20) decatherms of natural gas during the month.
42 The monthly surcharge shall be imposed at a rate determined by

C
O
P
Y



the commission under subsection (a), but not to exceed thirty cents (\$0.30) per decatherm for each decatherm consumed.

(c) The commission may impose the surcharge at different rates for different classes of retail customers of gas distribution companies based on the average monthly gas consumption of those customers from each class that meet or exceed the monthly consumption level specified in subsection (b).

Sec. 4. The money collected by a gas distribution company or an electric distribution company in surcharges under this chapter is exempt from all state income taxes and all fees imposed under IC 8-1-6.

Sec. 5. An electric distribution company or a gas distribution company that collects a surcharge under this chapter shall monthly deposit the amount collected for the surcharge in the fund.

Sec. 6. (a) The board of directors of the corporation may:

(1) make loans and award grants to persons to implement this article; and

(2) pay the expenses of administering this article; from money in the fund.

(b) Before the board uses money in the fund under subsection (a):

(1) an authorized officer of the corporation must execute a document in which the corporation agrees to meet the requirements of this article; and

(2) a copy of the document described in subdivision (1) must be delivered to each electric distribution company and gas distribution company that collects a surcharge required by this chapter.

Chapter 5. Recovery of Lost Revenue

Sec. 1. Until September 1, 2005, an electric distribution company or a gas distribution company may file a rate case with the commission to recover lost revenue due to programs initiated by the corporation under this article.

Sec. 2. An electric distribution company or a gas distribution company may present evidence in and argue the rate case filed under section 1 of this chapter concerning:

(1) the extent to which revenue erosion due to energy savings or usage reductions resulting from programs initiated by the corporation has had an effect on the company's opportunity to earn its allowed return;

(2) the appropriateness of establishing a rate making method to ameliorate this effect; and



1 (3) a proposed rate making method to ameliorate this effect.

2 **Sec. 3.** The commission may conduct an investigation after
3 **September 1, 2005,** to determine if it is appropriate and necessary
4 **for an electric distribution company or a gas distribution company**
5 **to continue to collect lost revenue due to programs implemented by**
6 **the corporation.**

7 **SECTION 2.** An emergency is declared for this act.

C
o
p
y

